



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 219, and 252

[Docket DARS-2015-0044]

RIN 0750-AI68

Defense Federal Acquisition Regulation Supplement: Clauses with Alternates—Small Business Programs (DFARS Case 2015-D017)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify clauses and their prescriptions for small business programs and to create basic and alternate clauses structured in a manner to facilitate use of automated contract writing systems.

DATES: Effective [Insert date of publication in the FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Johnson, telephone 571-372-6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 80 FR 58669 on September 30, 2015, to clarify, in the small business

programs' clause prescriptions, the appropriate use of the basic clause and its alternate clause. This final rule provides the basic clause at 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), in full text as well as the alternate to the basic clause in full text, instead of only reflecting the paragraphs that are different. The clause at DFARS 252.219-7010, now titled "Notification of Competition Limited to Eligible 8(a) Concerns-Partnership Agreement" is modified to incorporate Federal Acquisition Regulation (FAR) clause 52.219-18 and its two alternates into the existing clause at DFARS 252.219-7010. No public comments were received in response to the proposed rule. Three editorial changes were made to the proposed rule to (1) correct a typographical error, (2) update how the basic clause and alternate clause for 252.219-7003 are displayed at 212.301, and (3) spell out the acronym "eSRS" in the DFARS basic and alternate clause 252.219-7003.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the Shelf Items

This rule does not change the prescription for DFAR clause 252.219-7003, Small Business Subcontracting Plan (DoD Contracts); rather, the rule merely clarifies the use of the clause and the way it is displayed in the regulations. DFARS clause 252.219-7003 is used in conjunction with FAR clause

52.219-9, Small Business Subcontracting Plan, and applies to solicitations and contracts for commercial items, including commercially available off-the-shelf items. The clause is not applicable to acquisitions valued at or below the simplified acquisition threshold, because the FAR clause is only used in acquisitions expected to exceed \$700,000.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., and is summarized as follows:

This final rule clarifies: (1) DFARS clause, 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), which has an alternate, and (2) DFARS clause 252.219-7010, now titled "Notification of Competition Limited to Eligible 8(a) Concerns-Partnership Agreement," which is an alternate to a FAR clause. The basic and alternate clauses will be full, separate clauses for ease of use by the contracting officers. This rule also explains the appropriate use of the affected basic and alternate clauses for the small business programs. No substantial changes are being made to the clauses.

The objective of this rule is to clarify the use of each clause by giving the basic and alternate clauses a separate prescription describing when to use the clause for the small business programs. This does not change the applicability of the basic or alternate clause. The basic and alternate clauses will each appear in full text, which will facilitate use of the automated contract writing systems.

No comments were received from the public in response to the initial regulatory flexibility analysis.

DFARS 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), and its alternate are prescribed to be used with FAR 52.219-9 and its alternates. FAR 52.219-9 does not apply to small business concerns; therefore, there is no burden on any small business for this rule.

DFARS 252.219-7010, now titled "Notification of Competition Limited to Eligible 8(a) Concerns-Partnership Agreement," is the alternate for FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns. This clause only affects 8(a) concerns when competing for an 8(a) award. Currently, there are approximately 5,217 active concerns registered in SAM that are certified in the 8(a) program. Nothing substantive will change in solicitations or contracts for potential offerors; only the way the clause alternates are presented in solicitations and contracts will be changed. This rule will result in potential offerors, including small businesses, expending less time to review and understand the solicitation and contract. The rule anticipates saving contractors' time by making all paragraph substitutions from the basic clause and by not requiring offerors to read inapplicable paragraphs contained in the basic clauses where alternates are used in the solicitations and contracts.

The rule does not impose any additional reporting, recordkeeping, or other compliance requirements.

No alternatives were identified that will accomplish the objectives of the rule.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget

(OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35); however, these changes to the DFARS do not impose additional information collection requirement to the paperwork burden previously approved under OMB Control Number 0704-0386, entitled "Small Business Programs and Associated Clauses in part 252.219." The rule merely clarifies the use of two DFARS clauses and the way the clauses are displayed in the regulation.

List of Subjects in 48 CFR Parts 212, 219, and 252

Government procurement.

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Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 219, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 212, 219, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. In section 212.301, revise paragraph (f)(vii)(A) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(vii) Part 219—Small Business Programs. (A) Use the clause at 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), to comply with 15 U.S.C. 637.

(1) Use the basic clause as prescribed in 219.708 (b) (1) (A) (1).

(2) Use the alternate I clause as prescribed in 219.708 (b) (1) (A) (2).

* * * * *

PART 219—SMALL BUSINESS PROGRAMS

3. In section 219.708, revise paragraph (b) (1) (A) to read as follows:

219.708 Contract clauses.

(b) (1) (A) Use the basic or alternate clause at 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that contain the clause at FAR 52.219-9, Small Business Subcontracting Plan.

(1) Use the basic clause at 252.219-7003, when using the basic, alternate I, or alternate II of FAR 52.219-9.

(2) Use the alternate I clause at 252.219-7003, when using Alternate III of FAR 52.219-9.

* * * * *

4. In section 219.811-3, revise paragraph (2) to read as follows:

219.811-3 Contract clauses.

* * * * *

(2) Use the clause at 252.219-7010, Notification of Competition Limited to Eligible 8(a) Concerns-Partnership Agreement, in lieu of the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of FAR 19.805 and processed in accordance with the PA cited in 219.800.

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PART 252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 252.219-7003 by-

- a. Revising the introductory text, clause title, and date;
- b. Amending paragraph (a) by removing "eSRS" and adding "the Electronic Subcontracting Reporting System (eSRS)" in its place;
- c. In paragraph (c)(2), removing "Section" and adding "section" in its place; and
- c. Revising Alternate I.

The revisions read as follows:

252.219-7003 Small Business Subcontracting Plan (DoD Contracts) .

Basic. As prescribed in 219.708(b)(1)(A) and (b)(1)(A)(1), use the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS)-BASIC (MAR 2016)

* * * * *

Alternate I. As prescribed in 219.708(b)(1)(A) and (b)(1)(A)(2), use the following clause, which uses a different paragraph (f) than the basic clause.

SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS)—ALTERNATE I (MAR 2016)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan, clause of this contract.

(a) Definitions. Summary Subcontract Report (SSR) Coordinator, as used in this clause, means the individual at the department or agency level who is registered in the Electronic Subcontracting Reporting System (eSRS) and is responsible for acknowledging receipt or rejecting SSRs in eSRS for the department or agency.

(b) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 8502-8504), may be counted toward the Contractor's small business subcontracting goal.

(c) A mentor firm, under the Pilot Mentor-Protege Program established under section 831 of Public Law 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded to—

(1) Protege firms which are qualified organizations employing the severely disabled; and

(2) Former protege firms that meet the criteria in section 831(g) (4) of Public Law 101-510.

(d) The master plan is approved by the Contractor's cognizant contract administration activity.

(e) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(f) (1) For DoD, the Contractor shall submit reports in eSRS as follows:

(i) The Standard Form 294, Subcontracting Report for Individual Contracts, shall be submitted in accordance with the instructions on that form.

(ii) An SSR for other than a commercial subcontracting plan, or construction and related maintenance repair contracts, shall be submitted in eSRS to the department or agency within DoD that administers the majority of the Contractor's individual subcontracting plans. An example would be Defense Finance and Accounting Service or Missile Defense Agency.

(2) For DoD, the authority to acknowledge receipt or reject reports in eSRS is as follows:

(i) Except as provided in paragraph (f)(2)(ii) of this clause, the authority to acknowledge receipt or reject SSRs in eSRS resides with the SSR Coordinator at the department or agency that administers the majority of the Contractor's individual subcontracting plans.

(ii) The authority to acknowledge receipt or reject SSRs for construction and related maintenance and repair contracts resides with the SSR Coordinator for each department or agency.

(End of clause)

6. Revise section 252.219-7010 to read as follows:

**252.219-7010 Notification of Competition Limited to Eligible 8(a)
Concerns-Partnership Agreement**

As prescribed in 219.811-3(2), use the following clause:

**NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS-
PARTNERSHIP AGREEMENT (MAR 2016)**

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer:

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan.

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(3) If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, then the offeror's approved business plan is on the file and serviced by _____. [Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA.]

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) Agreement. A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas, unless—

(i) The SBA has determined that there are no small business manufacturers or processors in the Federal market place in accordance with FAR 19.502-2(c);

(ii) The acquisition is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, in which case a small business concern may furnish the product of any domestic firm; or

(iii) The acquisition is a construction or service contract.

(2) The _____ [insert name of SBA's contractor] will notify the _____ [insert name of contracting agency] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

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